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MATTHEW  
DAVID

# SHARING

CRIME AGAINST  
CAPITALISM



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# 1

## Introduction

*Sharing: Crime against Capitalism* sets out to examine the pros and cons of property, market and sharing-based economies in terms of innovation, production and distribution of informational goods. The book will address this comparison in terms of efficiency, efficacy and incentive. By informational goods is meant books, music, computer software, visual media, journalism, academic journal articles and scientific research (including pharmaceutical research and development). In contrast to the over- and misused notion of ‘the tragedy of the commons’ (Hardin 1968), which outlines how goods held in common can be overexploited and undermaintained in the absence of counterbalancing forces, but which then (erroneously) asserts that the only viable counterbalance is private property rights, my book (in line with the work of Heller 1998 and 2008) illustrates ‘the tragedy of the anti-commons’, wherein private ownership and competition inhibit the maintenance of public goods and reduce overall efficiency, efficacy and incentive. *Sharing: Crime against Capitalism* also highlights the superiority of a sharing-based economy in maximizing the public good and overall utility.

Free music online reduces opportunity costs (e.g., the inability to purchase one thing – such as a concert ticket – if one has just spent one’s money on something else – such as a recording), increasing spending on live performance; and when freely shared recordings boost live concert ticket sales, and, consequently, ticket prices, musicians get better paid. The Internet and World Wide Web illustrate the primacy of collaborative programming over commercial coding, and open-source networks of hackers have broken all silo-made corporate encryption. Newspapers and broadcasters draw upon freely shared content provided by digital ‘citizen witnesses’, and this has

allowed them to cut costs and sack staff. Yet, such organizations are challenged by the Internet when freely shared content surpasses traditional media claims to be the ones who bring the news and, in particular, who are the first to bring it to audiences (uncensored). Academic journals are increasingly owned by commercial publishers, which profit from content produced by public science, science which is made available without charge by researchers but which is then sold back to the research community in terms of rapidly escalating journal prices. Non-commercial funding (whether in the domain of pure science or of applied science such as in pharmaceuticals) underpins the research that creates most of the value in what may later be fenced off through patent.

While only too willing to cut costs to some degree by means of using freely shared content online (or from other non-property/non-market-based networks such as academic science), commercial intermediaries are threatened by free distribution of content if it is *too* effective in reducing cost. Success in reducing cost can also reduce scarcity and, if that cannot be controlled, may then lead to a radical reduction in price (potentially to nothing). This ‘threat’ (or promise – depending upon how you see things) underpins the pressure for legislation to further criminalize sharing. In conditions of global network capitalism, sharing information is a ‘crime against capitalism’. Nonetheless, despite stringent efforts, such legislative strategies have been radically unsuccessful in actually containing the level and significance of sharing.

In this context, where criminalization has largely failed to prevent sharing, alternative business models have emerged. These new business strategies have attempted to ‘compete’ in the spaces created by sharing as an alternative to capitalist business-as-usual. What has emerged, as this book will document, is a form of post-scarcity ‘sharing economy’. This is, at least, at the level of informational goods. In suspending intellectual property rights in practical terms (the law still formally protects IP), and in bypassing the need for markets (free-sharing is not the same as direct reciprocation in the form of exchange by barter), what emerges is something not fully capitalist. However, there still remains the potential for people to get paid and even for some people to make a ‘profit’. Yet, this is in conditions where content is open and accessible to ever greater numbers; and in many cases for nothing.

## Sharing: Crime Against Capitalism?

The significance of free-sharing across global digital networks needs to be seen in the light of the emergence of global network capitalism (Castells 1996, 2009). The contradictions within global network capitalism are both the spaces in which free-sharing arose, and those that are intensified by free-sharing. The first contradiction lies in globalization itself. On the one hand, globalization extends market and property relations. Globalization has meant expanding markets by means of a deregulation of trade barriers and the integration of distribution chains within global distribution networks. Globalization has also extended property rights protection beyond national jurisdictions. This is particularly true for IP, where the harmonizing of national laws has been achieved in recent years through a combination of multi- and bilateral treaties (Yu 2015). Globalization also reduces costs through global outsourcing of production to cheaper labour markets (Chon 2015). On the other hand, globalization affords an exponential expansion in pirate, counterfeit and generic ‘outsourcing’ in production and distribution (Rojek 2015).

In similar fashion, digital networks expand markets and reduce costs for copyright holders and counterfeiters alike – this is the second contradiction of global *network* capitalism. This is true in music, film, publishing, software and computer games, as well as in television (Kirton and David 2013). Digital compression, distribution and processing have afforded the expansion of legal markets and have also allowed widespread bypassing of the legal channels for gaining access, as well as the bypassing of the technical means of preventing access to those who do not pay – i.e., encryption (David and Kirkhope 2004).

Third, the ‘capitalism’ within global network capitalism shows an intensification of the tension between markets and property rights, which is a generic contradiction – but one that global digital networks take to new levels. Intellectual property protection is designed to limit market entry and so to suspend competition. However, pirate capitalists operate illicit markets at the expense of IP-based monopoly profits. In so doing, they reduce prices. Whether ‘capitalism’ is primarily defined by ‘markets’, as Weber (1930) argued, or whether ‘capitalism’ is primarily defined by ‘private property’, as Marx (1995/1867) held, remains disputed. This is not just a dispute between theories. It is a dispute enacted in the conduct of IP defenders, pirates and sharers across global digital networks.

The free circulation of information challenges IP-based business models, because in such models it is information that is the commodity being sold, or at least it makes up the greater part of the value being sold relative to the physical packaging in which the informational content is delivered. This is true in relation to copyrighted software, music, published works and live sports broadcasts, as well as in patent-protected scientific research. If the price being charged is largely determined by the market value of the informational content and not by its packaging, then when that informational content is freely available elsewhere, the price collapses.

Knowledge has always been valuable and, in part at least, defines human social and economic activity in distinction from animal behaviour (Gouldner 1976). What is understood today as intellectual property law emerged alongside capitalism and the industrial revolution (May and Sell 2005). The significance of innovative technologies and novel creative expressions, in giving economic advantage, is not new. Nor is the drive to protect such innovation/novelty as something akin to 'property'. The emergence of what Castells calls a network society (1996, 2009) does give greater significance (as a cost of production) to information over physical raw materials, physical labour power and/or energy inputs. However, it is an error to simply assume that an 'information society' is one where informational content inevitably becomes more valuable than physical objects, effort and energy. Where once information-rich commodities (such as novels, films, musical recordings and so on) required physical carriers to be manufactured and distributed, networked computers allow such content to be circulated without the need for traditional modes of packaging and distribution. In the past, someone seeking to sell books or records would look to protect themselves from commercial rivals by means of copyright. Now it is possible for every networked computer user to copy and share content that would have once required expensive printing or record presses.

Because the challenge to IP control has shifted from commercial to non-commercial copying, it is sharing that has been criminalized all the more forcefully in recent years. The rise of the tape-cassette first saw a shift in attention from commercial piracy to personal infringement (Marshall 2004), but digital network sharing has taken this challenge to far greater levels (David 2010). However, while efforts have been made to prohibit sharing as a threat to network capitalism, there is also evidence of a more fluid relationship between sharing and business, which this book will highlight. Legally speaking, sharing, in the sense of making free copies of IP-protected content without



permission, is an ‘alternative to business’. Yet it can also be the basis for ‘alternative business models’. Freely distributed content is being profited from by some, even as freely shared content is undermining profit from the sale of such content by those who retain the traditional IP-protected business model. Sharing (in the sense of lending) an individual’s physical goods and/or giving up their time may lead to an extension of market relations (if that lending is done in the form of paid ‘renting’). However, IP infringement, in the form of free-sharing (making copies) of formally IP-protected content, challenges capitalism as a system of property rights. In this way, free-sharing of digital content challenges us to rethink our theoretical accounts of property, exchange relations, production, distribution and incentive.

Since the end of the Cold War, a ‘global network capitalism’ has been constructed. At the heart of this new ‘regime’ has been the deregulation of labour combined with an intensified regulation of property protection, particularly intellectual property protection. In ‘global network capitalism’, monopoly rights over informational content have been extended in time, space, scope and depth (David and Halbert 2015). This is true at least at the level of formal law, even if enforcement of such a regulative framework has not been fully achieved. The World Trade Organisation (WTO) was created in the years just after the collapse of the Soviet Union. The WTO’s first act was the 1994/95 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS required all signatories to the WTO to pass into domestic legislation the treaty’s harmonization of global IP protection. At that point in time, the perceived threat to intellectual property was still commercial infringement. Only one year later, the World Intellectual Property Organization (WIPO) produced a revised Copyright Treaty (1996). This treaty first addressed the perceived global threat of free digital sharing. In 1996, it was the increased availability of cheap CD copiers to the general consumer that was considered the primary emerging challenge (Krueger 2004). Simply having two CD players built into one stereo system, and the fact that one of these had a record function, meant the ‘digital revolution’ that had been such a benefit to the music industry since the advent of the CD in 1982 (Sandall 2007) suddenly started to look like a threat. Yet the ‘threat’ from CD burners was as nothing when compared to what came next: online file-sharing.

Free digital sharing arose in the copyright domain. Its development from music (discussed in Chapter 3) to film and onto live visual content (see Chapter 4) in part followed, but also drove, technical developments. The same is also true of computer software (see

Chapter 5). In a further development of technical capacity, the 3D printer revolution (Rifkin 2014) will make IP-rich physical goods available to ‘download’. Where film and television followed music, downloading objects will follow the downloading of purely informational content. However, for the moment, ‘free’ sharing of (patent-protected) information (such as is contained in generic medicines and ‘fake’ designer handbags) does not ‘give’ you the pill or the bag. For this, for now, the end-user still requires what IP holders call ‘pirate capitalist’ intermediaries (Rojek 2015).

While the copyright industries’ war on downloading has commanded the headlines regarding the potential challenge of sharing, significant issues also exist around sharing in the domains of IP covered by patent and trademark. Two-thirds of pharmaceutical science is funded by non-commercial actors (Boldrin and Levine 2008). Scientific innovation is built upon the principle of free-sharing of knowledge (Merton 1972/1942). Sharing-based knowledge production makes large private profits only if pharmaceutical companies can place end-products under patent controls, or if counterfeiters can sell unlicensed copies at inflated prices – something itself only possible because the monopolies they infringe keep prices higher than would be the case if competition were legal. In both cases, shared knowledge production fuels private profits only if its shared origins can be controlled.

On the other hand, trademark holders, when seeking to reduce costs by outsourcing production, also make life easier for counterfeiters. Counterfeiters can use the same cut-price outsourced manufacturers used by lawful rights holders to make identical, but IP-infringing, ‘fakes’ (Chon 2015). However, at the level of selling these pills and bags and so forth, the struggle is between legal and pirate capitalists.

Manufacturing generic drugs in developing countries is another example of the relationship between IP control and infringement. Unlike counterfeit drugs, generic drugs replicate the chemistry of the patented product but not the trademarked packaging of its owner’s brand. Generics undercut patent monopoly prices, just as they also undermine the market for counterfeits. This enables safe and affordable access to medicine in the global South (Darch 2015; Millaleo and Cadenas 2015; Thomas 2015). Again, we see that what was produced in conditions of freely shared knowledge can become private property; and what was private property can be appropriated and sold by others. Medical research produced by publicly funded science may be patented, and this may then be infringed by generic drug-makers. (Of course, such things as medicines and designer goods cannot be

simply shared freely at the current time, but free access to the information required to make them does enable radically more affordable generic products.)

This book is for the most part concerned with the free-sharing of informational content. It is not, therefore, primarily concerned with commercial generics, counterfeiting and piracy. The 3D printer revolution is increasing the scope for the free downloading of information-based physical goods. However, at the present time, for all but the simplest of objects (and only for the very small minority of people with access to a 3D printer), information-rich things still require manufacturers and distributors (lawful or otherwise), and these are for the most part commercial – not sharing-based. As such, a large part of this book focuses upon the free-sharing of content protected under copyright. This includes music, visual media, software and publishing, including scientific publishing. However, to the extent that sharing is central to scientific knowledge production, this book does address genetics research and pharmaceuticals.

### **Alternative Business Models or Alternatives to Business?**

The collaborative production and free distribution of code (protocols) enabled the production of the Internet (Abbate 1999), as well as of the World Wide Web (Berners-Lee 2000). Nevertheless, such foundations do not mean that the Internet and the Web cannot be used to make money.

Facebook streams advertising to its users when they freely share their lives on its platform, and this business model is hugely profitable. Similarly, selling eyeballs to advertisers is the basis for Google's business. This is despite the fact that most of the information being sought via Google's search engine is not for sale as such (Vaidhyathan 2012). Services like YouTube (itself owned by Google) also make their money from advertising linked to the freely shared content that users upload, or look for and then look at, via these search services. A range of very lucrative alternative business models work on the basis of linking end-users to freely shared content, but then also linking both to advertising content.

Traditional business models, such as those of record companies, film studios, publishers and broadcasters, have suffered as a result of the rise of free-sharing. Nevertheless, during the first wave of the digital revolution, these businesses benefited greatly from reduced costs and wider distribution networks, fuelling a wave of global

cross-media integration. The largest recording, filmmaking, publishing and broadcasting businesses are today owned by global cross-media corporations (Castells 2009). More often than not, one arm of the same corporation will be selling the Internet access that enables the infringement of content produced and/or distributed by other arms of that same corporation (David et al. 2015).

This book documents how sharing-based production and distribution underpin the greater part of informational content in today's network society. This ranges from science to publishing and the arts. Collaborative production is the wellspring of profit in pharmaceuticals, biotechnology, print and television. It also underpins the wider 'creative industries', although this is in large part due to the non- and underpaid nature of much creative work, under conditions of copyright control and royalties rather than real wages and secure employment (O'Brien 2015).

Free-sharing is good for business if content is free to *business* while remaining scarce to customers. However, this condition cannot be easily maintained in a network society. Free-sharing cannot be kept scarce when it can be freely copied and distributed online. This potential for post-scarcity threatens, or promises (depending on your point of view), to turn a reduced cost of production into a radical driver of price reduction. Such price reduction is potentially to zero if the cost of making each new copy by any given computer user is too small even to be measurable (Rifkin 2014; Mason 2015).

Where marginal cost, the cost of making the next copy, approaches zero, there can no longer be said to be any scarcity in such a good. In these conditions, the need for allocation mechanisms such as markets and property rights is brought into question. In relation to informational goods, that 'zero marginal cost' situation has become a reality. Nonetheless, even if the marginal cost of informational goods falls away in a network society, the prior development costs remain. Those who defend IP argue that it is in the need to recover these fixed and upfront costs that a justification for property rights and markets remain.

Markets and property rights may be warranted after all if free-sharing of outcomes does not incentivize individuals and organizations to produce efficient and effective products and distribution mechanisms for them. The three related issues of efficiency, effectiveness and incentive are therefore recurrent ones in this book. At least in relation to informational goods, *Sharing: Crime against Capitalism* will show that free-sharing outperforms markets and property rights on all three fronts.



## The Economics of Sharing and of Capitalism

‘Economics is the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses’ (Robbins 1935: 15). As this quotation suggests, economics primarily concerns itself with producing and distributing rivalrous goods. Rivalrous goods are things where ‘use’ by one person limits or even exhausts use by one or more others (Phythian-Adams 2015). Institutions designed to deal with the rivalrous quality of time and things include property rights (which may or may not be ‘private’ property) and markets. Other institutions include state planning, communal regulation and familial obligation. All such arrangements for dealing with the rivalrous quality of time and things are ‘social institutions’, including markets and property rights. Goods where one user’s use does not limit further use are, in contrast, referred to as non-rivalrous goods (Phythian-Adams 2015: 33). Non-rivalrous goods are, for the most part, non-physical ‘creations’ of human activity, such as technical knowledge and artistic expressions. Depending upon a good’s rivalrous or non-rivalrous quality, ‘sharing’ it relates in different ways to markets and property rights. The ‘sharing’ of rivalrous goods may be enacted through renting, free-lending, disintermediated exchange and/or barter. Nevertheless, referring to such direct and instrumentally calculated exchanges as ‘sharing’ has been brought into question by some writers (Hern 2015). New forms of rental, lending, direct exchange and barter may extend market relations through digital network services. In some such situations, property rights are upheld in the manner of someone offering to rent out a physical object that they own. However, markets may be extended even while undoing property rights. This might occur when the distribution of generic medicines and counterfeit designer goods are extended by means of online marketing. Market expansion at the expense of property rights also occurs in the production and distribution of ‘pirate capitalist’ CDs and DVDs (Rojek 2015).

Moreover, free-sharing, when limited to the private family and friendship sphere, represents no challenge to markets and property rights. In fact, unpaid domestic labour provides an essential foundation to markets and property-based allocation mechanisms (Crompton 1997: 83–98). It is the ‘private’ character of such actions that reproduce the undervaluation of such provision of resources. Digital networks, on the other hand, create scope for high levels of free-sharing within a global ‘public’ domain, a domain in large

part created by such sharing. As Habermas argues (1992/1962), free speech was central to the emergence of a public sphere in the long eighteenth century. Today, in similar fashion, it is free-sharing that is pivotal to the creation and defence of a global public sphere. This public domain stands in opposition to ongoing attempts at a proprietary enclosure of all domains of human interaction today (Dutton 2009). Free-sharing of time and things within specified (high-trust) communities can be enabled by digital networks. Where there is no physical limit to multiple and simultaneous use, such as in relation to fully non-rivalrous informational goods, digital networks enable forms and levels of free-sharing that challenge both markets and property rights.

Whether free-sharing of informational content represents an existential threat to market- and property-based arrangements depends rather upon the capacity of sharing, not just to undermine conventional economic arrangements, but to *provide alternatives*. This question of alternatives can be broken down into three elements: *efficiency*, *efficacy* and *incentive*.

Efficiency concerns the *cost* of producing a good. Efficiency can itself be divided into five dimensions (Heyne 2008): production and allocation efficiency, informational and transactional efficiency, and ‘Pareto optimization’. Production efficiency, as its name suggests, relates to the cost of making particular goods. Allocational efficiency connects to production efficiency, but is specifically about *optimizing investment of resources*. Production and allocational efficiency together provide a narrow conception of efficiency within the immediate process of production. Informational efficiency, meanwhile, describes the level of resource expenditure required to *make an optimal rational decision* about which available option best meets one’s needs. Transactional efficiency relates to the expense involved in *actually fulfilling a preference* once it has been selected (there may be various expenses involved in actually taking hold of and/or using an item).

Efficacy is closely connected to efficiency. However, efficacy refers to the *utility* of goods, not the cost of producing them. It is concerned with the ‘quality’ of particular outcomes and the overall quality of all the outcomes achieved (the overall quantity of such quality achieved). In this connection, production and allocational efficiency are linked within a narrow definition of efficiency in terms of costs of production, while informational and transactional efficiency extend the concept of efficiency to the domains of circulation (i.e., distribution). Informational and transaction costs have a significant impact

on the *efficacy* of decisions made, in terms of their quality and access (i.e., their overall utility).

‘Pareto optimization’ is a term used to refer to a condition of overall efficiency where no more utility can be achieved through relocating resources without then creating a more significant loss of utility by making that alteration. In relation to non-rivalrous goods, this zero-sum calculation is irrelevant. However, time remains limited even where digital plenitude makes a near infinite amount of informational content available for nothing. Indeed, in such conditions the scarcity of time becomes ever more apparent. This continued scarcity of time in conditions of informational non-scarcity is highly significant in the economics of free-sharing.

Whether in relation to techno-scientific innovation or artistic creativity, incentive, meanwhile, refers to levels of *motivation*. Free-sharing, or so the argument commonly goes, may diminish incentive/motivation if creators/inventors thereby receive no reward for their efforts. However, free distribution also offers scope for promoting paid performance, peer recognition and the display of abilities that are better rewarded than direct creators and innovators actually receive from copyright and patent. Indeed, *Sharing: Crime against Capitalism* demonstrates how free-sharing of non-rivalrous informational goods outperforms market- and property-based systems on all counts: efficiency, efficacy and incentive.

## The Structure of the Book

This book sets out the case for sharing as an alternative to markets and property-based forms of allocating informational goods across seven domains: libraries, music, visual media, computer software, publishing, genetic science and pharmaceuticals. These seven themes are addressed one by one, in Chapters 2–8.

Chapter 2 addresses libraries and the digital world, the idea of a library as a repository of free (at the point of use) access to information, and its migration from walled spaces to networked infrastructures. Where once the best libraries were free to access only to the most privileged groups in society, today’s digital repository of knowledge extends access to unprecedented numbers, even while digital divides (around access to the Internet and quality of access to/skill in use of the Internet – see David and Millward 2014) continue to limit this availability. Information is either capital or culture, private asset or public good, depending upon its level of accessibility. The

struggle between the principles of ‘the bookshop’ and those of ‘the library’ become the defining conflict of the network society. The struggle for literacy, education and for public libraries is a long one. Today’s struggle for a free culture online is only the latest manifestation. Two digital revolutions do in fact coexist, one enabling the technical locking down of access to and distribution of content, the other allowing the breakdown of these barriers. This double digital revolution can be seen in the recent history of libraries, as well as in the wider domain of online information selling and sharing.

Chapter 3 addresses peer-to-peer music-sharing online. The recording industry business model in the second half of the twentieth century became centred on the idea of the ‘recording artist’. The advent of file-sharing has seen this (largely illusory) common sense fall apart. The first digital revolution in music was the CD, creating a commercial profit storm. That the affordances of digital storage, distribution and processing should have so radically turned the recording industry upside down was not predicted by those who laid its foundations. The history of file-sharing has been a legal and technical, cat-and-mouse struggle, not the unfolding of any linear logic of technology. The case of recorded music most clearly illustrates the mythic nature of the claim that rendering information as property (rather than as freely shared culture) benefits creators or that it is the key to stimulating creativity. The copyright-based record contract leaves almost all artists in a condition of debt bondage to their record company in return for recordings that *may* get them noticed, and hence gain them a live audience whose ticket purchases *do* offer the artist a better reward for their time. That such an audience can more efficiently and effectively be gained for nothing online, and when free access to material eliminates the opportunity costs between record sales and ticket sales/prices, artists are better off when their music circulates with no price tag attached.

Chapter 4 engages with live-streaming of television content. Where the CD replaced an earlier commodity (the vinyl disc), the first digital revolution in television was the replacement for free-to-access (state- or advertiser-funded) ‘terrestrial’ broadcasting with subscription-based cable and satellite television. The scope to erect technical monopoly controls over access and to increase audience size by global digital distribution technologies allowed the first digital revolution to outbid terrestrial rivals for legal monopoly rights, especially over live sports events. Technical monopoly control was assured early on by the fact that the domestic Internet bandwidth was insufficient to stream live events with any clarity. Rupert Murdoch’s UK Sky and



US Fox networks were built up on the basis of this set of monopoly conditions. Only with the development of a faster domestic Internet bandwidth was it possible to bypass such monopoly control. Live-streaming now offers a second digital revolution that is beginning to challenge the first.

Chapter 5 looks at open-source software and proprietary software, and argues that it is wrong to assume that copyright is the best way to incentivize the production of such software. Those producing code in corporate research and development departments have never successfully produced encryption code that open-source-based and free-sharing-based communities of hackers have not been able to break – almost as soon as it has been released. What Himanen calls ‘the hacker ethic’, and what Söderberg calls ‘play struggle’, represent forms of incentive and creative space that allow for far more innovation than takes place in corporate silos. Even within the silos of corporate coding, such as those making commercial computer games, the claim that the prevention of free-sharing by means of copyright is either necessary or significant is questionable. These industries stay alive by bringing out new products rather than protecting old ones with legal monopolies. At the cutting edge of gaming, the scope for free-sharing increases as the scope for proprietary control falls away. The history of the Internet, the World Wide Web, Wikipedia, Facebook, Google, Apple and Microsoft all illustrate the primacy of free-sharing over the capacity to lock down ideas. The creation of non-profit organizations in the digital commons has been essential not just for the creation of the standards and protocols on which the network society operates, but also for maintaining scope for future development, as well as for meaningful and informed choice for end-users.

Chapter 6 unpacks the complex and diverse world of publishing: academic, journalistic and trade. Academic publishing is the most extreme case, with no payment to authors for journal articles, even while commercial purchase of academic journals in recent decades has seen exponential increases in journal prices. Authoring, editing and reviewing are all done for little or no payment as part of a sharing-based academic economy structured around peer recognition. Journalism (print and broadcast), meanwhile, has been radically challenged by digital media networks, although the Internet is only a secondary part of a longer-running digital revolution in print and broadcasting. Digital proliferation of media channels has seen advertising revenues spread thinner, while the rise of citizen journalism online offers cheap copy and yet also a threat to the value of

traditional journalistic authority. Horizontal integration in publishing houses and vertical integration of these within larger media companies in general has been combined with an increased outsourcing of the agent function, creating increased pressure to deliver ‘big books’. An ever-shrinking number of big players produce a similarly shrinking pool of such repeaters (‘franchises’), pot-boilers, cookbooks and tie-ins. Free-sharing remains the wellspring for new writers. Beyond the tiny layer of big book celebrity authors, most writers make money from types of activity that free circulation of their work actually encourages.

Chapter 7 offers an account of free-sharing in science, with a particular focus upon contemporary genetics. At one level, genes are fundamentally ‘free’, in the sense of being a common heritage of all humanity, both those of our own bodies and those of the non-human ‘nature’ around us. At another level, genetics (as scientific knowledge of genes) is best furthered through the free-sharing of research, rather than through commercial patenting. Genetic diversity, in non-human nature and within human bodies, pre-existed scientific ‘discovery’, even as traditional knowledge of certain properties and conditions also preceded today’s scientific accounts. Whether by means of patent or by new forms of rights over traditional knowledge, attempts to regulate access to such content, and knowledge of it, have proven highly problematic. The defence of genes as a common or shared heritage of humanity continues not only in relation to human genetics, but also in the defence of farmers over claims made, and practices undertaken, by agribusiness in relation to genetically modified crops. It is argued that not only is free-sharing an ethical imperative; it is also essential in the production of scientific knowledge in the first place. The Human Genome Project and related public and private gene mapping and patenting strategies highlight both the superiority of publicly funded and freely shared scientific research, and the dangers of private patent thickets in closing down knowledge production.

Chapter 8 looks at the case of pharmaceuticals. Medical research requires large scale, upfront investment. Patents are said to incentivize such investment, so free-sharing of pharmaceutical research findings reduces the willingness to invest. As Chapter 8 will show, this argument is doubly misleading. First, the greater part of innovative pharmaceutical research is funded directly, or indirectly (via tax breaks and other mechanisms), by non-commercial sources; meanwhile, the greater part of what commercial actors do spend is done so on ‘down the line’ development (i.e., reverse engineered, ‘me too’,

patent-evading emulation), as well as on clinical and post-clinical trials, all of which turn out to be far more expensive when conducted commercially than is the case when they are undertaken by publicly funded agencies. Privately funded research is also far more prone to corruption, price inflation and even medically harmful conflicts of interest. Second, private patents limit research development and collaboration, where the foundation for innovation is shared access to past and cutting-edge findings. Beyond the question of scientific production of new drugs, which is best served by free-sharing of knowledge via public science, generic drugs (drugs made by freely appropriating patented or formerly patented formulas) are actually the best way to maximize distribution, undercut monopoly prices and limit the market for dangerous counterfeit medicines that seek to profit from deceit in relation to existing patent and trademark monopolies. The cases of HIV/AIDS and Ebola illustrate the primacy of publicly funded medicine in both initial drug development and in delivering results to those most in need.

Chapter 9 will draw together the evidence presented in the preceding chapters to answer the question: is sharing a crime against capitalism, or is capitalism capable of absorbing and adapting to the challenge of sharing? This final chapter highlights the failure to contain sharing within the bounds of a property-based profit system. As such, sharing represents an existential challenge to capitalism today, even as the pre-figurative spaces of such a new mode of production have not yet abolished the fetters of the old.

### **What Sharing? And (more to the point) What is Sharing?**

Two questions are important to address at this point. First, why have the seven domains that make up the substantive content of this book (libraries, music, visual media, computer software, publishing, genetic science and pharmaceuticals) been chosen. Second, how does this book seek to apply the category 'sharing' when it is a term that means so many different things to different people (and sometimes even to the same people)? The answers to both questions relate to one another. This book focuses upon the sharing of informational goods first of all because these goods are central to today's informational or network society, and, second, because the non-rivalrous nature of such goods renders them so much easier to share and, in so doing, challenges traditional conceptions of value, scarcity and price. Attention to libraries arises as a pre-digital form

of informational sharing that prefigures contemporary struggles, while attention to music, visual media, software and publishing in the digital age addresses the most powerful fault lines in the conflict between free-sharing and a market based on property rights and prices. Discussion of scientific and medical research highlights how this struggle is growing even in those domains where non-rivalrous informational content still requires physical carries and procedures (pills, seeds, etc.), as was once the case – but increasingly is not – in the domains of books, records, films, newspapers and the like. My choice to address genetics and pharmaceuticals, but not designer goods and patented jet engine components, etc., is deliberate. Pills, tests, procedures and seeds still require physical interventions or making, and cannot simply be ‘downloaded’ by the average Internet user. This makes them more similar to designer clothing and engine parts than to the digital download of a film, game or book, etc. However, the science behind genetic and pharmaceutical inventions are predominantly created by scientists working within a culture of shared knowledge production, not the commercial domains that often claim credit for their creations, nor to the commercially driven fields of designer goods and of commercial manufacturing. This is not to say that the study of design, fashion and engineering would not also highlight significant foundations for creativity coming from shared cultures, and to that extent further study of these fields certainly warrants attention.

The second question, of what is being meant here by sharing, has already been answered in part. This book addresses the sharing of non-rivalrous informational goods, and to that extent what is being talked about here is the making of free copies, not the dividing up or lending out of physical objects. The notion of giving and taking that apply to singular objects – such that taking removes the thing from the person giving it – does not apply when making copies of infinitely reproducible code. In place of giving and taking, what exist in relation to informational goods are domains of production and reception, enabled by systems of transmission in between them. Sharing may occur at the level of coproduction, free circulation of copies or in the free reproduction of such copies by end-users. The distinction between sharing as peer coproduction and sharing as free copying is significant, but porous. These dimensions may complement or contradict, diverge or mesh. Some informational content is produced through peer-to-peer coproduction (as in hacker software, Wikipedia, the Web and Internet platforms, scientific research, citizen journalism and fan fiction), and circulated freely beyond its producer commu-



nity. Other content is produced by commercial actors (such as film, television and music companies and commercial publishers and drugs companies), but is then circulated freely by sharers against the wishes of IP holders. Sometimes, content produced by scientists, academics, authors and others (such as citizen journalists, Facebook and Google users, etc.) may be created and given away for nothing, only for it to be sold or profited from by third parties. While IP holders present sharing primarily as being ‘theft’ by non-producers, circulating and copying content produced for commercial use and so ‘harming’ such producers, this book presents a very different story. Free-sharing, even in relation only to non-rivalrous informational goods, represents at least three different things (coproduction, circulation and making copies). However, even when not everything being freely circulated and copied was produced with the intention of its being freely shared, or was made by means of peer-to-peer sharing communities, a sharing economy is neither contradictory nor merely a parasite. At one level, this book both highlights the power of sharing-based coproduction in software, publishing and fundamental science, and also shows the power of sharing-based transmission and copying in the domains of music, visual media and pharmaceuticals. Incentives to create may not always appear to coincide with efficiencies and overall efficacy at the level of distribution and use. At a deeper level, it must be noted that this is a false divide. Fans downloading music freely spend more on concerts and so help coproduce the live musical experience. Fan fiction invigorates creation, and creates opportunities for authors to get better paid than most do through royalties on their work. Distinct forms of sharing can operate in parallel – such as when public science leads to knowledge that is then released from IP control by those manufacturing generic medicines.

As such, this book seeks to focus upon the sharing of non-rivalrous informational goods, and to examine at least three dimensions of such sharing, in production, circulation and copying. Production, circulation and copying map onto the questions of incentive, efficiency and efficacy that will also shape the evaluative framing by which it is asked whether free-sharing represents a viable economic alternative to property rights and markets – which this book shows it does. This multi-field and multi-levelled approach creates a diverse array of interactions, affordances and outcomes. This diversity ranges from reinforcing commercial monopolies, creating space for new and highly profitable companies, to radically challenging the possibility to own property or to maintain scarcity (and hence prices) in the digital age. While this book does conclude that sharing is a significant

threat to a system (capitalism) that is based on property, scarcity and prices, this is by no means a simple, linear and singular fact. The threat is sufficient to mean that although those who seek to govern and maintain global network capitalism increasingly seek to criminalize sharing, such efforts have largely failed. Whether a post-scarcity network society will become a post-capitalist one is a possibility, not an inevitability.

# 6

## Publishing: Academic, Journalistic and Trade

### Introduction

This chapter addresses the significance of sharing to publishing: academic, journalistic and trade. The gift economy of free-sharing that underpins academic writing is based upon a peer exchange system that long preceded Internet-based modes of peer exchange and wiki-nomics. Digital networks enable such a sharing economy to leave behind a dependence upon commercial distributors whose role was based on the scarcity value of paper copies. Citizen witnessing and the scope of free online access to journalistic content promises/threatens to bypass the editorial/self-censuring nexus characteristic of ‘traditional’ print and broadcast media. Similarly, digital network sharing of fiction and trade non-fiction challenges the editorial control and commercial concentration characteristic of today’s trade publishing industry.

The principle of peer review, at the heart of Merton’s (1972/1942) notion of ‘academic communism’, has also become a source of heated argument in conflicts over who counts as a legitimate peer. The average Wikipedia science entry has four major errors, while the *Encyclopaedia Britannica* has three. However, Wikipedia can be instantly corrected (Anderson 2009), while the *Encyclopaedia Britannica* will carry its errors for years, until the next edition is published. In such conditions, the questions of what counts as an authority, who should be allowed to review whom, and of how knowledge should be produced, evaluated and used all become increasingly obviously at odds with commercial interests.

The current threats posed to the viability of mainstream print

and broadcast journalism, when compared to new media sources of news and opinion, raise similar questions as to the relative merits of freely circulating media and commercial models of news and journalism. Claims regarding the balance between ‘authority’ and ‘freedom’ in the production of news reflect competing and ‘interested’ positions, not neutral and objective realities; and these ‘positions’ are themselves built on shifting foundations. Not only are such self-justifications by editors and journalists open to question, but the very existence of such roles as viable positions are also open to question.

This chapter will conclude with a discussion of fiction and popular non-fiction (‘trade’) publishing. Having undergone a fourfold process of commercial concentration in recent years, trade publishing has intensified a ‘winner-takes-all’ model of rewarding ever-smaller numbers of ‘big books’, selected according to ever-tightening processes of author, agent, editor, publisher and corporate self-regulation informed by dominant market definitions of value (platform, sales, ‘sameness’ and multimedia circularity – Thompson 2012). One per cent of authors earn welfare-benefit-equivalent earnings or above from publishing royalties, while around one-tenth of that number make the equivalent to average earnings or above. Most authors, even in this very small upper band, have to make ends meet by other means (Silbey 2015). As such, free-sharing offers a better way to engage with, and even make a living from, more direct interactions with audiences. However, to date, the sum of unpaid labour, shared by creative authors (as by academic authors and citizen journalists) but which becomes the saleable-content-IP controlled by publishers, remains a means of maintaining profit and so of not challenging the capitalist publishing model. The rise of the e-book and print-on-demand in publishing has not, to date, produced anything like a ‘Napster moment’ in publishing, even if this may one day come about.

## **Academic Publishing**

Most academic publishing results in no payment made to the author. Academic journals do not pay the authors, it would be seen as a threat to the integrity of the claims being made by authors if they were to do so; in fact, some journals even charge for work to be published. While peer review processes exist in such a way as to avoid giving the impression that work is being published because payments have been made, such financial transactions remain ‘suspicious’, seen as potential modes of ‘vanity’ publishing, rather than respectable academic



writing. In the case of academic books, the royalties system rewards only the most popular titles to any significant degree. Whether designated ‘popular’ or ‘textbooks’, such works that may sell in large numbers are not then deemed ‘academic’. The reasons that academics publish have next to nothing to do with direct financial reward and is a clear illustration of what Robert Merton called ‘academic communism’: the requirement of academics to share their work with their peers in order to be given due recognition for their original insights. Academic principles concerning plagiarism are distinct from those of copyright and/or patent. Unpaid academic publishing encourages free use in exchange for recognition in the form of the appropriate citation of the works used.

As a model for creativity and innovation, science and academia in general are based upon sharing ideas. This is despite strong efforts to bend academic life towards an IP-based business model. However, changes in the production and distribution of academic works – in particular, the development of large online databases – and the requirement on academics to show increasing relevance and impact, make it increasingly difficult to defend a model of academic publishing based on the notion of IP protectionism, whether that be in respect of individual journal articles or books. Where universities increasingly negotiate online journal packages en bloc (such as with JSTOR) and where, at the same time, universities require, in the interests of ‘impact’, that academics make their published work available in an open-source format, the rationale for having commercial publishers publish journals for profit is challenged. In a global digital network society, the argument that commercial publishers can market and distribute journal articles better than academic networks and associations weakens. As such, the general principles of free-sharing, which, in fact, govern the writing, editing and peer reviewing of academic journals anyway, comes to challenge current conventions of payment and ownership in terms of control and distribution.

### *Publish or perish*

The maxim ‘publish or perish’, as well as being the name of a software package designed to allow academics to check out how many people have cited their work (and also how many people have cited the works of their peers), is also a turn of phrase that paradoxically highlights why creativity assumes sharing. As Boldrin and Levine (2008) document, the most significant discoveries and inventions are almost always discovered by many people at the same time.

Whether it was powered flight, the theory of evolution, the structure of the atom or DNA, radio waves, or the steam or internal combustion engine, discovery comes from within a shared environment of innovation, not from individuals working in isolation. Creativity and innovation require sharing, which is why attempts to prevent sharing by means of intellectual monopolies are the antithesis of any functional academic and scientific system. In addition to ‘standing on the shoulders of giants’, scientists and academics share ideas with their current peers. Academics publish in order to share their ideas, not to get paid. However, this is not pure altruism. The maxim ‘publish or perish’ reflects the fact that credit for new discoveries and inventions goes to the first person to publish and disclose. While the patent system allows such primacy to be expressed in the form of ownership rights, academic publishing does not assert ownership over the ideas expressed, even if their particular expression may be subject to copyright. In essence, academics publish because being the first to give an idea away confers upon the sharer the status of ‘discoverer’ (not ‘inventor’).

Robert Merton’s (1972/1942) ‘academic communism’ is a sharing-based economy that does not suspend competition. However, such an economy does not rely upon the principle of property; it is not a capitalist economy, even while extreme competition for status does lead to very powerful hierarchies akin to ‘wealth’. Merton’s ‘Matthew Effect in science’ (1968), where the best predictor of career success in science is the status of one’s doctoral supervisor, highlights how status accumulation may come to parallel a form of ‘property’ (what Pierre Bourdieu – 1988 – would later describe as a form of ‘cultural capital’). However, such status is still dependent upon successful gift-giving – in other words, being first to share an idea that is then cited by others. It is not enough, then, just to give things away. Status depends upon the number of people who subsequently take up the gift given, in terms of citing the work in their own publications – i.e., the gifts given must be deemed valuable. Status in academic life is therefore dependent upon both giving away the maximum overall value in gifts, and in having those gifts duly (and formally) accepted.

### *Academic journals: A very expensive gift economy*

The academic gift economy may be ‘communist’, in sacrificing property as a gift to be given away in the hope of receiving ‘discoverer’ status, and also in gaining status respect as measured in citations given to such gifts. Yet this ‘sharing’ economy may or may not be at

odds with highly profitable publishing strategies based on property rights in the form of copyright. For the most part, academic journals publish works freely offered by their authors. Researchers may be funded to carry out research, but journals do not pay researchers to publish the results of that research. Researchers submit papers for free, for the reasons outlined above: the need to share their work to acquire status, both as originators and in terms of the number of times such work is cited. Prospective journal articles (papers) are 'peer reviewed' by other academics who are themselves unpaid. Academic reviewers review work because they hope to read new ideas first, and because reviewing is deemed 'worthy' within an academic community based upon sharing. Being asked to review work is a mark of peer recognition, which itself exists in a hierarchy of such journal-based recognition: reviewing, joining editorial boards and eventually becoming editor of a journal. All these roles are primarily unpaid and undertaken as part of an economy of peer recognition that may or may not 'cash out' in other ways (such as institutional promotion). The academic editors of journals may or may not receive some payment to cover their expenses, and time taken from other duties, associated with their role; but, again, journal editing is largely done for recognition and not for money.

Nevertheless, the content of most academic journals is subject to copyright and, as holders of such copyrights, publishers can sell access to the journals and the articles they contain. Sales are mainly to academic libraries and individual academic subscribers. Unlike book publishing (academic and trade), academic journals are sold direct to academic libraries and individuals, and on a repeat basis, thereby eliminating both the margin taken by retailers and the risks associated with trying to sell particular books (actual sales of which are hard to predict). The free content and the secure market to libraries make academic journals highly profitable. That academics share their research – both by giving the content away for free and then by buying it back for libraries that will allow academics (and students) to freely access the content – is a situation that works very much to the benefit of publishers.

John Thompson (2005) outlines the shift in the academic journal market in recent decades. Between 1970 and the late 1990s, academic journal subscriptions in the United States and the United Kingdom increased in price by 13 per cent per year, meaning that journals increased in price by thirty times in that period. The increases have carried on apace since then (rising approximately 10,000 per cent between 1970 and 2016). This price increase is far greater

than the rate of general inflation in the same period. As Thompson notes, it is not possible to read everything in an expanding academic field, and an academic's work is often judged on the basis of where it is published, not simply on the fact that it has been 'made available' somewhere. Many key journals have therefore become central markers of status, and 'anyone who is anyone' in a field will seek to publish in them. As a result, everyone in that field needs to have access to that journal, and the publisher that owns that journal (and via copyright over the content therein) can increase the journal's prices with near impunity, knowing that price elasticity – the change in sales volume that would follow an alteration in price – for such titles is very close to zero.

With free content, no retailer margins and a stable market, the field of academic journal publishing is very profitable. Expansion in the university sector since the 1960s has meant that, while increasing journal prices have squeezed university library budgets, overall journal budgets – and, hence, publisher profits – have remained high. Even as prices have rocketed, sales have not plummeted. As Thompson (2005: 99–102) documents, commercial publishers entered the academic journal market in the 1960s and bought up valuable titles, as well as whole journal publishing divisions and houses – thereby concentrating the field into a smaller and smaller number of dominant corporate hands. This concentration has further increased the bargaining power of publishers over universities in terms of the content that was, as has been mentioned, mainly given freely in the first place by academics working in those universities.

Faced with the spiralling cost of journal subscriptions, universities have sought to develop negotiating consortia – in part, built upon the shared, journal-searching databases that university researchers and libraries developed in the post-war era of expanding science research. Recent attempts by universities in the United Kingdom, the United States and the Netherlands to force the commercial journal publisher Elsevier to make a significant part of its content 'open access' (Jump 2015), without increasing its charges (either to libraries or to the authors of the works published), has been led by university principals, not just their librarians – a significant escalation in a longstanding conflict. These universities have threatened to require their staff not to serve as reviewers or editors for the company – which has radically increased prices and profits via digital distribution that radically reduces costs. This pressure from university leaders has been combined with grassroots campaigning by academics similarly angered by the company's profiteering from their freely provided content

and editing labour. 'The Cost of Knowledge' (<http://www.thecostof-knowledge.com/>) campaign, which has organized a boycott of work for the company by academics, has more than 16,500 members. Bad publicity and the threat to the reputations of the company's flagship journals – as the perception is that key authors will take new work elsewhere – has forced the company to offer concessions, though the underlying issues are far from being resolved. While Elsevier has been the highest-profile target for academic disquiet over rising journal prices in an age where free academic labour combined with free digital distribution could set knowledge free, the issue is generic.

As such, universities and publishers face-off against one another, with consortia of universities seeking to bring down the overall cost of buying back the content, produced freely by their own staff, from publishers who also engage in various forms of aggregation in order to increase their bargaining position. Corporate concentration is one strategy, with more and more titles and imprints owned by fewer and fewer large corporations. Publishing consortia are another strategy, whereby publishers work together to strengthen their bargaining position. A third strategy is 'bundling', where publishers offer blocks of digital journal content, such that access to 'must have' journals is tied to a wider raft of other titles. Universities have responded by requiring their staff to provide their institution with 'pre-publication' copies of works that have been accepted for publication in journals so that this version of the content can be made available (online). This is via the university's portal in the first instance, but the content can also then be aggregated via university library consortia and collaborative research portals.

To date, 'sharing' in the academic journal field has, then, been a licence to print money for publishers. However, the creation by universities of ever-larger electronic modes of aggregation (searchable databases), combined with their take-up of strategies by which content that will appear in journals is enabled to circulate freely by other means, does challenge the currently dominant business model. Giving content away for free is profitable if such content is being given away freely to publishers who then assert exclusive copyright control – because the publisher is then able to prohibit subsequent free circulation to end-users (readers). If that prohibition is broken by various forms of free circulation, sharing becomes a serious challenge to the profitability of business as usual.



*Wikinomics, 'Peer' review, metrics and assessment*

The suicide of Aaron Swartz in 2013 represents an extreme outcome in the struggle between free-sharing of academic content and attempts to protect copyright control (Halbert 2014: 1–4). Swartz was arrested and accused of causing millions of dollars-worth of damage to academic publishers' profits by hacking into the electronic journal aggregation service JSTOR and de-encrypting hundreds of thousands of journal articles. At present, access to JSTOR requires the user to be an individual subscriber or belong to a subscribing organization (most typically, a university). Subscriptions are very, very expensive, at least relative to any individual seeking to subscribe. In de-encrypting a large number of journal articles, Swartz believed he was giving content back to the public who had, for the most part, already paid for it. The research that journals sought to own publication rights over was/is, in large part, publicly funded. Threatened with the prospect of 30 years in prison, Swartz killed himself.

The idea that academic publishing should be freely available, just as it is freely given and freely reviewed, is a form of 'peer review' that parallels what has, in other settings, been called 'wikinomics' (Tapscott and Williams 2008). It is often suggested that Wikipedia is the very antithesis of academic publishing, and yet, in many respects, it is very similar. Many academics fear that students rely too much on the peer-constructed entries provided by Wikipedia over and above the texts given 'authority' by dint of being published in academic journals (and books). Yet, the process by which authority is given in academic journals and books is 'peer review', not any other kind of 'higher' authority. While professors may offer their own selected reading lists to guide their students in what to read – at least as a first point of departure – it is hoped that students will not simply come to believe everything their teacher tells them, or only to read what the teacher has recommended. Instead, students should be encouraged to ask whether or not what they are reading is credible, not just to believe all of what an 'authority' tells them to read. The fact that the average Wikipedia entry – as noted earlier – contains no significantly greater number of errors than the average *Encyclopaedia Britannica* entry, while also being open to much quicker and more convenient revision (Anderson 2009), has salience in this respect. The principle of peer review, then, is simply ongoing with Wikipedia, even if it is essential for any user to ask who those peers are. Students have to learn what more established academics should already know. Everything needs to be cross-referenced and authority should not be

taken for granted. If academic work carries some 'authority', this is due to reputable (usually university-employed) peers in the relevant field giving their input for free in the form of peer review. It should not be assumed that this authority comes from the publisher. As Thompson (2005) elaborates, recent cost-cutting measures in academic publishing have seen significant reductions in the time and money put into editing, copyediting and proofreading drafts, and with almost all of this work now outsourced in any case, it is even less credible to suggest that publishers themselves 'add' rigour to academic work.

Nevertheless, academics often use the status of particular publishers and places of publication as proxy signals for the level of academic rigour in the work contained, at least when assessing the merits of work they cannot themselves evaluate (for reasons of time and/or expertise). It is precisely for this reason that certain journals have become so very profitable. Academics have come to use journals to tell them what would be worth reading outside their own domain, not so much within it. If academics cannot read everything, then one might therefore suppose that commercial journal publishing is just a necessary cost to filter out the flood of things that are not worth paying attention to. Such a supposition, however, would be misguided on two counts. First of all, as argued above, the assumption that work in highly regarded journals will be more likely to be good than work published or distributed by other means is dependent upon the free peer reviewing of academics for those journals and not on their commercial control. That this quality control can command a price because it is under copyright control is not the same as saying this price is necessary to the production of 'quality' and hence is legitimate. The quality control affected by peer review is 'free', so is not causing necessary costs. Second, in an age of digital metrics, the question of whether an article is being cited widely can be independently verified, and academics do not need to simply assume that the best work will be that which is published by the most prestigious titles. The most successful academics use their peer networks to alert them to what is good to read as well as to what is new and of merit in their own area (Zeitlyn et al. 1999). Undergraduates ask their friends; so do professors. The difference between undergraduates and professors is not their technique, but rather their friendship networks. Professors tend to have better-read contacts, both in their exact field (Bourdieu 1988), and in adjacent fields (Granovetter 1973). Postgraduates (and management committees) use various technical proxies (citation indexes and bibliographic data-services).

Amongst established academics, 'place of publication' is really only significant when gauging the status of those outside one's own immediate field of expertise.

Cooperation and competition operate between and within networks: peer sharing and selling interlace. On the one hand, technical networks can act to distribute unencrypted journal articles. On the other hand, they can also share peer reviews and recommendations that reduce publishers' distribution and marketing costs while increasing the distribution of copyrighted content that was written and reviewed for free. Sharing, as we have seen, is the foundation of what are currently very profitable academic publishing strategies; but such sharing, if it leaks out and cannot be controlled, may come to threaten such profitability. Current battles over 'open access' are illustrative. Publishers are keen that any such systems that will make research findings more accessible to wider communities of use will retain their right to set prices, even if that requires universities and government to pay publishers what they (publishers) claim they could have charged if they had kept control over access. On this basis, canal owners and pigeons should have a claim against the railways and the telephone service, respectively, for loss of earnings. University strategies to ensure that all work done by academics is made available (in pre-publication format at least), via university and research network web-portals, does see journals lose their monopoly position, without those bypassed being able to demand compensation for profits lost in the ending of their monopoly position.

### *Academic book publishing*

Thompson (2005) distinguishes between academic monographs that disseminate the latest research findings to a mainly academic audience, and the forms of higher education publishing aimed at students (the 'textbook' market). The expansion of higher education provision in the last 50 years has seen increased library spending overall but not an increased spend per student. Larger student numbers have seen an increase in spending on textbooks (by students and libraries), but not on monographs. Libraries' budgets have been squeezed by increased journal prices (see above) and increased student numbers (leading to the need for more textbooks). As such, sales of monographs have fallen radically. In the 1970s, monograph print runs of 2,000–3,000 hardbacks were the average. This has fallen to 400–500, with 78–85 per cent of monographs never selling more than 750 copies (Thompson 2005: 95).

Only a very small number of academics make any money from writing textbooks; the majority of such works do not generate significant earning for their authors. This is because royalties are paid at only a very low percentage (around 5–10 per cent) of net sales, with a range of costs deducted even from this small amount. Those who write monographs cannot reasonably expect to earn anything from royalties – rates are even lower than those offered on textbooks. Royalties of 5 per cent (or nothing) are common, and on net sales (after deduction for the cost of indexing, some formatting, and image and other IP rights), there is no significant pecuniary incentive for academics to write monographs. As a result, the need to ‘share’ ideas to gain academic status is pretty much the sole incentive motivating authors of such works. Yet, in parallel with academic journal publication, content that is for the most part freely generated, with a view to sharing it, is then copyrighted by publishers for sale. While not as extreme as has been the case for journals, in recent years the price of monographs has also spiralled in the UK (and risen, although more slowly, in the United States), as publishers have sought to maintain overall profit levels on diminishing sales (Thompson 2005: 116–117). With prices escalating and with library purchases of monographs falling, the ability of other academics to access works (and, in reverse, the ability – of authors – to make their work accessible) is radically diminished. In a chilling fashion, authors produce ‘outputs’ simply to fulfil the requirement of their institutional five- (or six-) year research plan, but with little anticipation that any but a tiny number of readers will ever actually be able to access their content. By means of monopoly pricing, a form of censorship arises that many academics have come to accept as the necessary logic of their field.

Yet, the logic of sharing that motivates academics’ willingness to write for next to no direct payment also creates scope for wider forms of free distribution that could challenge current publishing models. Google Books sought to offer the possibility of legal access to monographs currently out of print, or otherwise inaccessible, either in part (allowing readers to access selected pages/sequences of pages for free), or in full via new forms of print-on-demand publishing. This has been stifled for the present. However, the scope for freely available e-books circulating online in contravention of copyright is ongoing. Most academic monographs that are otherwise priced out of the market, for any but the most well-resourced libraries, are available online in illicit e-copy versions; and the choice of academics to put pre-publication copies of monographs online is another positive development, in terms of access to knowledge. That publishers seek

to snuff out such moves suggests the threat that it poses to business as usual. At non-monopoly prices, Google Books offered to stimulate demand for previously inaccessible works and hence open up the 'long tail' of older works in a fashion similar to what Amazon has done for the market in currently available works (Anderson 2009). This is at odds with a business model (discussed below) that seeks to sell a narrow range of new 'big books'. Accessing the long tail benefits the overall culture. And as the music industry's success in closing down Napster simply encouraged more fully distributed forms of sharing, so clamping down on Google Books in part explains the profusion of illicit e-books.

### **Journalistic Publishing: The Editorial Nexus and Beyond?**

In early 2015, the BBC and the *Guardian* newspaper in the United Kingdom both enthusiastically reported on the resignation of the journalist and commentator Peter Obourne from the *Daily Telegraph* newspaper. Obourne resigned, claiming that editorial policy at the *Daily Telegraph* had been dictated by the need to secure and please key advertising clients, citing in particular the HSBC banking group, whose numerous and significant infringements of UK banking regulations, and subsequent fines as well as other sanctions, were rarely reported in that title when compared to other titles not receiving significant advertising revenues from the bank.

The more cynical may conclude that this is merely the tip of the iceberg. Sociological studies of media organization and of media content (e.g., Curran and Seaton 2010) highlight how media ownership and its concentration, as well as the increasing role of advertising in the financing of newspapers, shapes content – both as business friendly and as focused around human interest rather than wider social organization (Habermas 1992/1962). Such control – by which ownership and finance shape content – is exercised through 'the editorial nexus'. Editors are appointed by owners and usually do not need day-to-day direction. Where Obourne's claims may be unusual lie in the suggestion that advertisers and marketing managers were said to have intervened explicitly in directing editors, when it is often assumed that an editor's position depends upon their ability not to need to be told on which side their bread is buttered.

However, Obourne's resignation does highlight the fact that journalists, to some extent at least, hold to, or at least claim to believe in, principles of journalistic integrity and professionalism that are



at odds with the notion that they are simply ‘hacks’, paid to write advertising friendly copy in the interests of owners and advertisers (Allen 2013). That the *Daily Telegraph* is credited with being one of the United Kingdom’s quality newspapers is to imply that it also holds to such principles of professionalism. Obourne’s claims can be seen as a shocking revelation of corruption, even as his resignation can be seen as evidencing principles that resist such corruption. The same tension between self-congratulation and self-criticism is outlined by Jean Baudrillard in relation to the Watergate ‘scandal’ (1994: 14–15). Investigative journalism’s occasional exposure of corruption becomes the warrant for business as usual, a news cycle that is fundamentally uncritical and subordinate to dominant interests. However, such control of investigative journalism – as merely an illusion of critique to persuade audiences to believe what is fundamentally propaganda – may not always be sustained.

Whether or not ‘old media’ journalism (here, print and broadcast forms of mass media newsmaking are being discussed together under this label) should be defended or abandoned has become central to debates over the significance of new forms of ‘citizen journalism’ – a free-sharing of ‘on the spot’ coverage from non-professional actors caught up in particular events, that is said either to supplement or replace traditional commercial/professional forms of news organizations and journalists.

### *The digital challenge*

Stuart Allen (2006, 2013) notes that the current ‘crisis’ in journalistic news production is, for the most part, driven by attempts to reduce production costs. The process of collecting and reporting news is expensive by the very nature of its supposedly being ‘new’. While some level of news gathering has always been ‘outsourced’ via news agencies, independent reporters and photographers, newspapers and broadcasters do require their own staff, both in-house and in the field.

James Curran and Jean Seaton (2010) document the proliferation of new media channels in recent decades. The upshot of such media pluralization has been that advertising revenues that were once concentrated in a small number of print and broadcast titles/channels are now spread far more thinly. Many new digital channels have very little interest in news content, while a small number of new digital channels (such as Fox, Sky and CNN) have specialized in news. Both types of new channel challenge traditional news-driven media organizations

– diverting advertising revenues and viewers (which again translates back into declining advertising revenues per channel). Digital technologies have radically reduced costs in print media. While this has saved money, digital publication has also afforded an explosion in lifestyle/niche magazine publishing (McRobbie and Thornton 1995). These new publications have eaten up a growing share of advertising revenues and diverted sales from newspapers (which has also reduced what advertisers pay established titles), so paralleling the crisis in broadcast news revenues.

Curran and Seaton (2010: 247) observe that declining budgets for news production are associated – not least in the minds of journalists and editors – with a reduction in the scope for ‘investigative reporting’. Two things are worth noting here, however. First, the digital challenge arose primarily from commercial media competition, due to the proliferation of commercial channels and publications, not from the Internet and ‘free’ news distribution. Second, the claim that cuts have eaten into the capacity of journalists to engage in investigative reporting does rather assume that this was once a widespread practice, now being diminished. It should be recalled that the greater part of professional news reporting was and remains ‘routine’ news production – the practice of reporting the claims being made by dominant actors (politicians, business leaders, the police, stock markets, banks, other media commentators, celebrities, and so on). As such, ‘free’ citizen journalism is not responsible for killing professional journalism, and neither is most professional journalism the investigative heroism depicted in romantic accounts (whether in fiction or in the ideals of journalists themselves).

### *Between incorporation and outsourcing*

Reduced news budgets bring into stark relief what are not fundamentally new pressures for journalists, those of incorporation and outsourcing. What Nick Davies (2008) refers to as ‘churnalism’ is the (supposed increasingly) self-referential character of news. For Davies, news is becoming a circular process of reporting on the reporting of comments about reports by established elites and other media commentators. This is compounded by the – again supposedly increased – reliance of journalists upon reports and press releases by those able to afford the production of such content. Without the funds to conduct their own research, journalists are only too pleased to be given reports compiled by others that can then be reported as news. All the better if the report has itself been produced by some

kind of 'independent' research organization – even if this is more often than not simply a vested interest paying an 'outsourced' think tank, commercial research organization or university researcher keen to gain funding and willing to manufacture news. Given sufficiently well-defined parameters, such research will find what its funder was looking for. Results will be packaged in easily digestible form, and in such a way as to tell the funder's preferred account of events, and will then be circulated to journalists to be reported as news.

The claim that 'churnalism' is fundamentally new is, however, false. From Walter Lippmann (2009/1920) to the Glasgow Media Group's *Bad News* (1976), and from *Folk Devils and Moral Panics* (Cohen 1972) to *Policing the Crisis* (Hall et al. 1978), it has been recurrently observed that news production draws primarily upon existing hierarchies of power to define hierarchies of newsworthiness and to gain content. What has changed is the detail rather than the overall picture. Incorporation has altered in two ways. First, newspapers and commercial broadcast news channels are increasingly owned within global cross-media corporations, such that *infotainment*, linked to the full range of media production, is increasingly deemed 'news' (Castells 2009). Second, the production of expertise and evidence by interested lobbies is now more professionally packaged for rapid and pre-digested media circulation. What is deemed 'verified' is still based on assumptions concerning which authority should be trusted, even if the composition of those deemed authoritative has shifted. Novel or not, professional journalists, under pressure and underfunded, are always 'incorporated' and hence 'compromised' in their production of news, even if resistance and journalistic principle also exist.

It is in this context, then, of being faced with budget cuts and the perception of 'incorporation', that journalists are also threatened with their own replacement, through the 'outsourcing' of their role to 'citizen journalists'. Allen (2013) suggests that the Asian tsunami of 2004, where there was an absence of on-site journalists but a profusion of still and moving images captured on mobile phones by those caught up in events, brought into sharp relief the significance of new digital technologies in making every citizen a potential reporter/eye witness. Precisely because professional reporters go to where editors tell them the 'news' already is, and because such presumption as to what is already newsworthy carries the taint of incorporation and bias (press conferences, staged events, embedded reporting), journalists will not be located where genuinely unpredictable 'events' occur. In contrast, citizens with cameras on their phones *are* located (poten-

tially) everywhere, without 'editorial' presumption as to what needs covering in advance. Against this backdrop, professional journalism loses its claim to bring 'news'. It is true, however, that the free distribution of citizen journalistic content may strengthen the commercial drive to reduce costs at the expense of paid reporters. Free content, when subject to editorial control over its use and interpretation, may simply reinforce the 'editorial nexus', at a reduced cost, and without the need to finesse the professional principles of those providing the copy.

Yet, outsourcing of this kind ultimately carries a significant risk to corporate news management. If the traditional 'fourth estate' (the 'free press' in its modern print and broadcast forms) comes to rely on new media sources (the 'fifth estate' – Dutton 2009), but simply does so to reduce cost, even while continuing to pursue editorial lines that reflect the incorporation of the fourth estate within other sets of dominant interests, this may further undermine the very 'trust' that underpins audience orientation to such sources in the first place. Why buy a newspaper or listen to the radio news if it is so deeply embedded with institutional bias, when key content may be better found via citizen journalistic sources online? The decline in newspaper sales, and, in particular, its decline amongst younger age groups, should alarm traditional newsmakers.

The case of Wikileaks (Beckett and Ball 2012) illustrates both sides of an argument over this very point. On the one hand, the capacity of a website like Wikileaks to bypass traditional media, when releasing evidence of perceived injustice and corruption, saw mainstream media running to keep up with what the new media 'whistle-blower' was revealing, in the hope of retaining their role as trusted sources of 'news'. However, at the same time, Wikileaks – in seeking to bring its most valued 'scoops' to the widest audience – chose to work with 'credible' existing newspapers.

### *Self-censorship*

Another challenge for traditional mass media lies in maintaining the *credibility* of its editorial-nexus-based distribution model – a nexus by which news and commercial/political power are wedded – in the face of new media 'news' models that lack such editorial control. In a distributed new media age, the decisions of editors appear as forms of censorship. Editorial selection can no longer be presented as self-evident and natural. Worse still, perception of such selection as bias only encourages people's evasion of such restrictions by

looking further afield online. In 2013, UK national newspapers were confronted with the dilemma of whether or not to publish images of a naked Prince Harry partying in Las Vegas. These images were widely available online. To some, the decision not to publish left newspapers looking outmoded. However, the decision to publish doctored images was deemed by others an infringement of privacy and an offence to public taste. Similarly, images of a topless Kate Middleton sunbathing caused editorial angst. Having been incorporated within global cross-media 'infotainment' empires, newspapers found themselves unable to keep *abreast* of the very downgrading of news of which they had hitherto assumed they were the champions and beneficiaries.

At the same time (in 2013), Twitter was widely circulating the names and personal details of various politicians, celebrities, sports personalities and journalists within the various estates of infotainment/churnalism who had secured 'super injunctions' against media coverage – not just of their private lives, but also against media coverage of the fact that they had secured earlier injunctions. A super injunction prohibits reporting of an earlier injunction. Super injunctions may have initially kept many in the dark. However, the fact that mainstream media were being gagged meant journalists and editors themselves were dependent – as was the population as a whole – upon the free online circulation of gossip/news for what might otherwise have been considered the job of journalism to report. A sense of journalistic purpose, let alone integrity, is hard to maintain in such conditions.

### *Citizen witness*

On the question of 'free' sharing of news online, an interesting history is unfolded by Stuart Allen in his book *Citizen Witnessing* (2013). In 1963, the assassination of John F. Kennedy was filmed by Abraham Zapruder, a member of the public, even as many hundreds of professional reporters, photographers and film crews failed to capture the actual shooting. *Life* magazine paid Zapruder \$150,000 to secure copyright on the film footage, which was subsequently withheld from public view for more than a decade. In 1991, in the early days of digital camcorders, but prior to the popular use of the Internet, the beating of Rodney King by Los Angeles police officers was captured on film by a local man, George Holliday. This footage was, after a few days, widely shown on television, widening the impact of such citizen witnesses, at least relative to the Zapruder case. The rise of the



World Wide Web and of digital film and camera functions on mobile phones escalated the capacity of non-professional citizen journalists to upload content as it happened from locations where they happen to be, rather than where journalists had been sent in anticipation of 'a story'. As noted above, Allen suggests the Asian tsunami of 2004 marked the coming of age of such 'citizen witnessing', but he also documents an array of cases since then where it is non-professional footage that captures the event, with professional news crews only able to cover the official post-event clean-up. What is of interest here is how such instant uploading of free content stands in marked distinction to the 'capture' of rights by *Life* magazine in the Zapruder example. The traditional idea of a 'scoop' has been replaced by a 'free-for-all' (King 2010), where access is no longer the determinant of attention. The question that consequently arises is exactly what does then determine attention? Can traditional news producers retain audiences in an age where they are neither first on the scene, nor able to claim scoops except in cases where that which is 'exclusively' possessed is only a contrived fabrication ('churnalistic' incorporation) and not 'new' news (in the sense of the unpredicted event)?

The free-sharing of citizen witness 'coverage' may simply help existing news organizations save money and hence stay 'in business' selling eyeballs to advertisers. However, such reliance on the outsourcing of 'eye witnesses', while cutting costs, also raises questions about why audiences should rely on the mediation of such professions, when the 'business as usual' of such mediators (editors) lacks neutrality.

The distinction between the 'public domain' (the space for free-sharing relative to the private domain of intellectual property) and the 'public interest' (a space for free exposure relative to the private domain of 'privacy') blurs in the domain of journalistic ethics. Images of John F. Kennedy's shooting were withheld by means of intellectual property rights but on supposed grounds of public decency. The more recent killing of Colonel Gadhafi of Libya (in 2011) was captured on the phones of the rebels who killed him, immediately circulated by the killers worldwide, and then 'splashed' on the front pages of newspapers. The killing of reporter Alison Parker and cameraman Alan Ward by a former (but recently sacked) TV station colleague in 2015, and the killer's live broadcast of his filming of the killings, adds a further twist to this dynamic. Free-sharing of such images online certainly limits the scope to censor such content, and it is beyond the remit of this work to address the ethics of sharing such content. The relationship between doing so and so-called 'cyber-terrorism' (Wall

2007; Yar 2013), where broadcasting murder and death is used as part of online propaganda, is another significant issue that is beyond the scope of this work. It may be the case that traditional journalism can reinvent itself as ‘all the news that’s fit to print’ (Campbell 2006) in just such a ‘free-for-all’ (King 2010). Whether audiences will trust traditional mediators, in an age where less tied alternatives exist, remains to be seen. Whether such trust ever existed is another contentious issue (Cohen 1972). The emerging ecology of news is a shifting field of explicitly biased commercial newspapers and channels, public service broadcasters proclaiming ‘balance’ within state regulations, and an online ‘free-for-all’, with audiences increasingly mobile – not just between channels, but even across the former divide between being consumers and producers of content.

### **Trade Publishing: Capitalist Concentration**

Thompson (2012) provides the most exhaustive account of the ongoing concentration of ownership and power within the field of trade (fiction and popular non-fiction) publishing in the English-speaking world. Concentration is effected by the combination of acquisition, multimedia integration, globalization and outsourcing. Concentration through acquisition is the first and most striking feature of trade publishing in the United Kingdom and the United States (that is, London and New York), which themselves dominate the English-speaking world, itself the dominant publishing field worldwide. Since the 1960s, older family- and founder-based publishing houses began to merge and be bought up to form larger houses, but it has been since the 1980s and 1990s that such concentration really took off – leading to a situation today where two-thirds of all trade sales are concentrated in the hands of five companies in the United Kingdom and eight in the United States. Although hundreds of publishing businesses exist, the number has fallen sharply, and the volume of sales achieved by smaller firms has shrunk, as sales by the majors take an increasing share. The larger publishing companies often retain the names of the smaller houses they acquire, so that the array of apparent ‘publishers’ – judged by what is written on book spines and on prelim pages – appears far greater than is in fact the case.

Acquisitions have been within increasingly integrated multimedia corporations, such that trade publishing becomes one part of an integrated business model. The integrated multimedia corpora-

tion will own a raft of companies controlling newspapers, television stations, radio stations, film production, distribution and screening companies, record companies, software and gaming firms, Internet distributors, as well as book publishing houses (Castells 2009). While Thompson urges caution regarding the idea that film tie-ins and TV spin-offs have either undone the integrity of publishing as a field, or saved it as a business model, he documents the rise of increasingly cross-platform strategies. Literary reviews in newspapers and other traditional outlets have declined markedly, while media-plugged literary prizes have boomed, celebrity endorsements have risen, and publishers struggle with one another to get their titles promoted by the likes of Oprah Winfrey's or Richard and Judy's TV bookclubs. Films, TV series and related TV and radio plugging become key to the business of blockbusters, while an existing media profile or a positive evaluation of a new author's potential for media pitching and plugging becomes central to getting a contract, and for determining its terms.

Thompson notes that four of the big five in the UK trade publishing field are also in the US top eight, something that was not the case thirty years ago. Publishing has become an increasingly global affair, or at least it has been increasingly profitable to publish worldwide since the 1980s (when in 1988 the United States fully signed up to the 1886 Berne Treaty – extending copyright to works physically printed outside the US), and even more so again after 1994/95, when the TRIPS agreement further enhanced the capacity of intellectual property owners to uphold their rights worldwide.

Outsourcing has also played its part in the concentration of trade publishing, at both ends of the production process. At the commissioning end, editors increasingly rely upon agents to supply them with new works for consideration, while at the other end of the production process, copyediting, proofreading and physical printing has been almost entirely outsourced – often to developing country locations. The latter has radically reduced costs, but the former (using agents) has – Thompson documents – increased costs for publishers dramatically. However, using agents to filter the 'slush pile' of prospective manuscripts produced by authors, and to represent authors with an existing reputation, has the effect of reducing publisher risk when choosing whom to publish. This has led to a further concentration in terms of what actually gets published by those larger publishers with the potential to promote and distribute widely. Successful agents will employ assistants to scan what comes into an agent's office, and to pass on only what the assistant comes to learn the

agent is likely to think will sell (such that it can be pitched successfully to an editor). Agents work on commission, and their reputation is built on the number of pitches they make that eventually sell well relative to those that lose money for the publisher. An agent cannot risk too often pitching works that may lower this reputation, as to do so would reduce the likelihood of editors taking their recommendations in the future. Reduced commissions would then limit that agent's ability to afford the assistants who allow them to filter so many prospective manuscripts looking for marketable works. The assistant and the agent learn what to look for 'in the field' as it currently exists. Agents pitch to editors, who are themselves also versed in the art and necessity of selecting what they believe will sell, and which their publishing house will judge them on getting right (or not). The sales of the works that editors commission can be readily monitored by their publishing house, and this company will itself be monitored for sales success by the corporation that owns it within its stable of other publishing houses. At each level of filtering, risk is minimized – and any author seeking to get through this set of filters must also learn quickly to 'play the game' in what they submit and, following submission, to heed the advice they are given from those further up the chain. Agents and editors, Thompson observes, pride themselves on being active in moulding, not just filtering, content. In Thompson's study, publishers, editors, agents and authors learn that what is needed is 'platform' (an existing or marketable media profile), 'form' (past success), 'comparability' (the ability to fit new work into existing pigeon holes) and 'buzz' (the pre-existence of some kind of expectation within the media field about an author). The publishing field has become an increasingly closed space of commercial self-selection. While Thompson found that reference to 'literary' criteria remains in the talk of actors in the publishing field, their capacity to regulate the autonomy of the 'literary field' in Bourdieu's sense of the term (1993) does appear substantially diminished. Outsourcing simply forces everyone in the field to self-censor, as all are under the same pressure to pick hits to sell now.

As concentration has intensified in all the ways outlined above, publishing has become increasingly focused upon what Thompson refers to as 'big books'. In recent years, the volume of works sold has become increasingly concentrated in fewer titles, both within national markets and internationally. Thompson (2012: 398) gives the example of the United Kingdom, where the number of fictional works selling more than 200,000 copies in a given year doubled in the 2000s, while the number of books selling between 10,000

and 50,000 fell away sharply. The overall number of titles selling 10,000 copies or more dropped from around 600 to 450. As this figure (10,000) may be taken as a baseline for providing an author with something approaching the minimum wage/welfare benefit level earnings, it can be suggested that 450 authors therefore are making a 'living', however basic, from fiction in the UK. Added to this may be those authors who are writing trade non-fiction. However, almost all of these (at least those selling in significant numbers, according to Thompson) are celebrities whose books are either ghost-written biographies or tie-ins to existing TV or other media vehicles. As such, it is not the case that the current business model in publishing is incentivizing the creative process for anything more than a few hundred authors, in a field where the number of works published each year is at least 100 times that figure. A winner-takes-all, 'big books' strategy promotes repetition (in form and source) while offering next to no financial reward to those working outside existing expectations and platforms. The same pattern can be discerned elsewhere (see below).

### **The Long Tail and the Real Lives of Authors**

Chris Anderson (2009) uses the concept of the long tail to explain how an online retailer like Amazon can make more money from selling small numbers of copies of each of the millions of lowest-selling books on its website than it does selling thousands of copies of each of its 1,000 most popular titles. This reverses the business sense that guides physical bookshops that have only limited shelf space. It is certainly true that Amazon has opened up a market for works at the low-sales end of the long tail, even though (as noted above) trade publishers still pin their hopes on a shrinking number of 'big books'. What is of more interest here regarding the long tail is that such sales highlight just how concentrated sales of books are today. Anderson (2009: 121) cites US book sales figures for 2004. Of 1.2 million titles recorded as having made sales, the top 12,000 titles sold, in total, approximately 150 million copies. The remaining 99.9 per cent of titles, however, sold more than 500 million copies *between them*. The top 1,200 titles sold more than 50,000 copies each per year (enough to give their authors something close to average wages or above). Yet only one-tenth of 1 per cent of titles (and hence authors) make these kind of earnings (the 1,200 titles may, of course, include multiple titles by single authors, thereby increasing individual earnings but reducing the number of authors in this 'fortunate' position of earning average



wages or above). In the data Anderson presents, those selling more than 5,000 copies a year rises to 2 per cent of titles. If Thompson's figures for the UK suggest 1 per cent of titles sell more than 10,000 copies, then Anderson's 2 per cent selling more than 5,000 suggests some comparability between the United Kingdom and United States – with both suggesting that only a tiny percentage of authors make a living from the sale of their creative work.

How then do most authors get paid? Well, it might be noted that the majority simply do not get paid at all; and, of those who get anything, the vast majority do not receive anything approaching a living wage, let alone what could substitute for the wages they might otherwise earn given their level of ability. Jessica Silbey (2015) interviewed a range of authors and inventors. A recurrent finding in her interviews was that most authors have to make a living from things other than royalties-based authorship as such, although often this involved 'writing'. Journalism, ghost-writing and other forms of 'work for hire' (in marketing, advertising, editing, and so forth), rather than 'authorship' in exchange for copyright protected royalties, was typical. Teaching and tutoring at various levels was another common source of earnings to fund a life in letters. Most of those that gave up paid employment to focus on 'authorship' had to rely either on past earnings or on the earnings of family members to support them, and most had to accept a significant reduction in income when swapping paid work for royalties income. Even Thompson (2012), whose sample was skewed towards those who had to some extent been successful in making a living in the publishing field, found that most published authors with agents willing to represent them had to make ends meet through various forms of 'work for hire' (e.g., ghosting, journalism, marketing), talks, promotions or teaching. The suggestion that commercial publishing pays authors is rarely true, and, even when it is, what it pays is rarely significant and almost never enough to live on; it is most often only a superficial supplement to paid labour of some other (if related) kind.

Boldrin and Levine (2008) note that Shakespeare wrote prior to the existence of copyright and since copyright has existed there has been no new Shakespeare. Likewise, they point out, while Mozart and Beethoven could not claim copyright on their works in the German-speaking world, composers in England at the same time could. However, this did not prevent German classical composers from being far more significant and successful than their English contemporaries. Free circulation may in fact explain exactly why classical music flourished in German-speaking countries, as has Shakespeare

worldwide. Reisel Liebler (2015) extends this view to the wider domain of fan fiction today. Free-sharing of authors' works, and freedom to play and innovate with originals, increases audience interest and engagement with works. The question remains, however, whether such interest can be turned into earnings, and if so by whom: authors or corporate intermediaries? If the latter is the case, then free-sharing may be just good marketing (Anderson 2010). If it is the former, however, free-sharing may challenge business as usual. Given that business as usual tends only to reward the established producers of 'big books', and those groomed by multiple layers of self-selection to emulate established formulae, while the vast majority of new and unestablished authors do not get paid, then the challenge of free circulation (the suspension of copyright in effect) does not threaten creativity. Rather, free-sharing threatens the profitability of the current winner-takes-all, 'big books', concentrated corporate model.

### **Is First Mover Advantage Enough?**

What would be the effect of a suspension of copyright – i.e., the possibility of free-sharing? With the rise of print-on-demand and with projects like Google Books – which set out to digitally scan the works held in many of the world's largest libraries – the possibility exists for all works to become freely available. Google estimated (Thompson 2012: 365) that, with copyright extended to seventy years after the death of the author, only 20 per cent of known book titles are in the public domain (i.e., are out of copyright); a further 70 per cent of known titles are, meanwhile, in copyright but not currently in print. Therefore, only 10 per cent of known works are in copyright *and* in print. Publishers took legal action to prevent Google Books from proceeding with its plans, which had involved allowing limited access to content that would then link users to publishers or print-on-demand options for works currently out of print. Boldrin and Levine (2008: 104) argue that publishers are wise to fear such access to 'out-of-print works', as such a 'long tail' threatens to 'crowd out' sales of new 'big books', those on which their business model is currently focused. An even greater threat to publishers would come from currently out-of-print works falling out of copyright altogether. If such works were to be made available without copyright, not only would their appearance potentially crowd out new 'big books', but they would not even be any one publisher's to sell (being open for anyone to print or to be made available freely online). In response to this threat, publishers,

as part of multimedia corporations, have been keen – and successful – in lobbying not just to maintain, but to extend, copyright terms. As Boldrin and Levine argue, extending copyright on works from fifty to seventy years after the death of the author cannot reasonably be said to promote the creativity of long-dead authors, but does extend the profitability of a small number of successful works (such as *Gone With the Wind* and titles featuring Mickey Mouse), even as it prevents the release of tens of thousands of other works that are ‘owned’ but whose owners do not continue to make the works available (the 70 per cent of all estimated books in existence).

Yet, while Boldrin and Levine argue that corporate publishing companies and the multimedia empires they belong to have good reason to lock down older content – retaining copyright but in most cases not keeping the work ‘in print’ – they also argue that publishing could be a ‘profitable’ business even in the absence of copyright. They argue that first mover advantage in a free market could make publishing creative works profitable, even if publishers had no monopoly control over subsequent distribution of the work. If true, a suspension of IP controls would not undermine ‘capitalism’, even if it would undermine a particular form of IP-protected capitalism where capital is protected by the suspension of markets. However, ‘free’ distribution based on instant and global sharing brings Boldrin and Levine’s account of how a ‘free’ market could function in the absence of intellectual property monopolies into question. Moreover, free-sharing may challenge not only neoliberal monopoly capitalism (based on IP-based market suspension), but also free market capitalism as well. As most authors make a living in ways other than from royalties, it should be recalled that neither of these ‘challenges’ is to creativity as such, but rather to whether or not sharing represents a ‘crime against capitalism’.

In publishing, first mover advantage is particularly acute. Sales of trade books are very heavily concentrated in the first weeks and months after release. Thompson (2012) suggests that the first six weeks see the majority of sales for the kinds of ‘big books’ from which publishers generate most profits. Boldrin and Levine (2008) cite evidence that may extend this to the first three months. But in either case, after only a very short time frame, the overall future sales value of most works falls away to an ever-diminishing level. While Amazon can profit from millions of such small sales, publishers – which have to print and warehouse such stock – cannot, and they remain afraid that digital versions or print-on-demand options for such older works would wrest control over sales from them and might also ‘crowd out’

their latest ‘big books’. While the first mover to publish a work, and to have invested in preparing the work and having copies printed, may profit from early sales and may continue to profit from small future sales of existing stock, the cost incurred for a rival to bring out an alternative version of the same work after its sales have peaked, relative to the trickle of subsequent sales, will be, most likely, insufficiently attractive.

The argument in favour of intellectual monopolies such as copyright is that an imitator could reap the benefits of another person’s prior invention without the investment required to produce that innovation. Once an innovation was made, it would be imitated; and prices for imitations could be set at a price below that which would cover the cost of the innovation’s development. However, first mover advantage may mean that by the time imitators had determined what was commercially ‘successful’, the indicator of such success – sales – would have already peaked and fallen away. As the fixed cost of entering the field (i.e., having to get copies printed) is not zero, and because most profits have already been made, the temptation to enter the field will be, therefore, insufficient. Even if entry costs fell to zero, or next to nothing (such as by means of print-on-demand publishing), this fact would itself ultimately disincentivize entry, as any entrant would find that the resultant increase in levels of competition – introduced by virtue of such ‘zero-cost’ entry – would see prices, in turn, falling to next to nothing. Contrary to economy theories that seek to justify IP, Boldrin and Levine (2008: 159) argue that it is the very existence of artificial barriers to entry (such as IP) that inflates prices, and hence make illicit entry potentially profitable. This suggests that removing IP protection would not undermine scope to make a profit from printing and selling original content, at least not for the first mover. In the absence of intellectual property, the first mover may need to pay the author an upfront payment to be given first access to that content. For ‘big books’ this is – de facto – already the case (Thompson 2012), as publishers’ advances for such works already exceed what royalty payments recoup in most cases. In effect, publishers buy the right to publish with a one-off payment that is repaid (to the publisher) from the overall value of net sales, even while the small percentage of such net sales that are owed to the author (in royalties) never amounts to enough to ‘recoup’ the advance they received before publication.

Boldrin and Levine highlight a paradox in what has become the orthodox economic argument for intellectual property protectionism. The standard model claims that high fixed costs of innovation cannot

be recouped if innovations are not protected from free market imitation once an original creation is developed. They assert, however, that such unprotected conditions would themselves remove the incentive for 'parasitical' late entry. In conditions where new entrants could cut prices to marginal cost (the cost of producing items without the need to factor in past development costs), prices would plummet and, in such conditions, said new entrants would be unable to make a profit. It is only the existence of an artificially high profit margin, due to monopoly protection, that creates an incentive for illicit production of IP-protected goods, relative to simply selling other unprotected items. The first mover advantage that gives the initial innovator (such as a publisher) a profit on the sale of information-rich content cannot then be replicated by subsequent entrants in fully free market conditions.

However, there is a further catch that may bring Boldrin and Levine's account into doubt. There might be no profit incentive to enter a totally free market for the sale of content whose marginal cost is so close to zero, as such goods would not sustain a price if competition occurred; as such, a first mover may well not see market competition even in the absence of intellectual monopoly protection. However, the free circulation of copies of works using distribution channels with near zero marginal cost is not done 'for profit', and, rather, may be carried out by fans seeking to share with others their interest in particular works or by authors keen to share their work with an audience they cannot find through the current corporate filtering system. Some readers may be willing to pay a premium for a physical copy of the work, rather than just having free access to a digital copy, but even this market is fragile. The ease of access to digital content, and the rise of various means of 'print-on-demand' will challenge traditional publishing, and may well also represent a challenge to publishers, as distinct from printers, as a business at all.

One interesting possibility, noted by Boldrin and Levine (2008: 142–144), is complementary marketing, and the willingness of audiences to pay a premium for either the direct 'authorized' or 'signed' copy of an author's work, or for particular forms of supplementary materials. This may extend as far as the packaging of a work. In an age of free digital sharing and print-on-demand, it may be that authors can sell authorized and signed versions of works, just as they currently make money from teaching, speaking and touring to meet readers. Musicians today (as was always true) are mainly paid to perform. Even when recordings rarely pay, the distribution of recordings is good publicity for promoting live performances and for



gaining other forms of lucrative direct engagement with paying audiences. Similarly, Charles Dickens made more money touring in the United States, where audiences flocked to hear him live after having read pirated versions of his stories (Pearl 2013), than he did from the sale of his better protected works at home. Publishers may, however, retain a role if the packaging of works remains something that audiences are willing to pay for, or if audiences are comfortable reading the same formulaic ‘big books’ by celebrity chefs and other brand name ‘pot boilers’. If you want news that repeats your existing prejudices (fake news being anything but new), and novels that are anything but novel, business as usual may continue to satisfy, but, ultimately, you might not be part of a sustainable business demographic.

### **Conclusions: Recognition, Valuation and Innovation**

Sharing occurs at a number of levels in the field of publishing. Authors (academic, journalistic and trade) share each other’s ideas freely – whether this be through libraries or in the free submission of work to journals, or in scanning the online commentaries of other journalists (professional or otherwise). Content that is published is the result of shared exchange, and, to the extent that this is what produces the content that commercial publishers seek to sell, sharing is essential to any capitalist economy of publishing. Recent intensification of such exploitation of freely shared content, as documented in this chapter – whether in the pricing of academic journals, the concentration of meaningful payment in trade publishing to an ever-smaller set of authors with an ever-larger number getting next to nothing, and in the use of citizen-captured content to help reduce the cost of news production – suggests that ‘sharing’ is a very good way for capitalism to reduce labour costs and increase/maintain profits.

However, such sharing at the level of production of content can only remain a boost to capitalist publishing enterprises as long as such shared production does not spill over into a sharing of content at the level of distribution – i.e., distribution to those who would otherwise, and are currently, paying to access what publishers acquire (often for free). For all the supposed e-book breakthroughs, and with the potential (and in some cases the actuality) of online book repositories and print-on-demand services, the world of publishing has certainly not witnessed anything like a ‘Napster moment’; to that extent, sharing at the level of production has not yet spilled over into sharing at the level of distribution in any fashion as challenging to profitability

as was seen in recorded music. That is not to say that such a tipping point may not be reached, nor that – given the nature of commercial exploitation documented in this chapter, and the limited contribution of such commercial processes to the actual creation of new ideas – such a tipping point would not be highly desirable.